PUBLIC PROSECUTOR

v.

RUSLAN BIN ABDUL RAHMAN

HIGH COURT, TAIPING
DATO' HAJI ABDUL MALIK BIN HAJI ISHAK JC
[CRIMINAL TRIAL NO 58-5-93]
21 APRIL 1994

DANGEROUS DRUGS: Trafficking in cannabis - Section 39B(1)(a) Dangerous Drugs Act 1952 - Whether accused had knowledge of the drugs in brown bag - Defence case - Whether burden on defence to put defence case to prosecution witness.

CRIMINAL LAW & PROCEDURE: Cautioned statement introduced at defence case - Prosecution applied to impeach credit of accused - Contradictions between contents of cautioned statement and evidence of accused in Court - Whether trial within a trial needs to be held to determine voluntariness.

In this case, the accused was charged for trafficking, to wit, 830 grammes of cannabis, on 28 January 1983 at about 4.00 p.m. at km 153, Jalan Ipoh/Gerik, Gerik, in the district of Hulu Perak, an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952, and punishable under s. 39B(2) of the Act.

Held:

[1] Upon maximum evaluation of the evidence as led by the prosecution, a *prima facie* case had been established and, accordingly, the accused was called upon to enter his defence.

[2] The accused had failed to rebut the presumptions under s. 37(d) and 37(da)(vi) of the Dangerous Drugs Act 1952, on the balance of probabilities.

[3] As the quantities of the dangerous drugs, to wit, 830 grammes far exceeded the stipulated amount in s. 37(da)(vi) of the said Act, the Court found that the accused did traffic in 830 grammes of cannabis on the date, time and place as mentioned in the charge.

[Accused found guilty of trafficking. Convicted and sentenced to death].

Cases referred to:

Khoo Hi Chiang v. Public Prosecutor [1994] 1 AMR 5 323 ***(foll)***
Public Prosecutor v. Ibrahim bin Mastari [1980] 2 MLJ 189 ***(refd)***
Chan Pean Leon v. Public Prosecutor [1956] MLJ 237, 239 ***(refd)***
R v. Vilayuthan [1935] MLJ 277 ***(refd)***
Chua Beow Huat v. PP [1970] 2 MLJ 29 ***(refd)***
R v. Pichimuthu [1970] 2 MLJ 143 ***(refd)***
Wong Swee Chin v. PP [1991] 1 MLJ 212 ***(refd)***
Muthusamy v. Public Prosecutor [1948] 14 MLJ 57 ***(refd)***
Krishnan & Anor. v. Public Prosecutor [1981] 2 MLJ 121 FC ***(foll)***
Pang Chee Meng v. PP [1992] 2 SCR 1 ***(refd)***
Mohamed Radhi v. PP [1992] 2 SCR 145 ***(refd)***
Nagappan Kuppusamy v. PP [1988] 1 SCR 271 ***(refd)***
Ilian Endin & Anor. v. PP [1988] 1 SCR 203 ***(refd)***

Legislation referred to:

Dangerous Drugs Act 1952, ss. 37(d), (da)(vi), 39B(1)(a), (2)

For the public prosecutor - Hj. Zainol Rashid bin Hussain, DPP
For the accused - Surjan Singh Sidhu; M/s. Surjan Singh Sidhu & Co.

JUDGMENT

Haji Abdul Malik bin Haji Ishak JC:

The accused was charged that on 28 January 1993, at about 4.00 p.m., at km 153, Jalan Ipoh/Gerik, Gerik, in the district of Hulu Perak, he trafficked in 830 grammes of cannabis, an offence under s. 39B(1)a) of the Dangerous Drugs Act 1952 ("the Act") and punishable under s. 39B(2) of the Act.

The unchallenged evidence of Inspector Zulkifli bin Abdul Ghani (SP5-"Zulkifli") was that he led a party of police officers and laid an ambush for the rider of motorcycle bearing registration number ABC 1250, on 28 January 1993 at about 3.20 p.m., in and around the vicinity of Jalan Ipoh/Gerik as shown in sketch plan (P19). Zulkifli and his men, in civilian clothes and in separate vehicles, took up ambush positions, and waited for their prey. At about 3.57 pm, they sighted the rider of motorcycle ABC 1250 passing their way from the direction of Gerik town towards Lenggong. They noticed that the rider, who was alone, spotted a grey jacket with dark trousers and white crash helmet. They also noticed rather prominently, a brown bag strapped neatly to the rear seat of motorcycle ABC 1250. Constable Detective Rahim bin Mohd. ("Detective Rahim") who rode motorcycle WCN 7191 with Constable Detective 92034 Ruslan bin Deraman (SP6-"Detective Ruslan") as pillion, gave chase followed closely by Zulkifli and Lance Corporal 59601 Mohd. Shah bin Hashim (SP7-"Mohd.

Shah") in motorcar PCQ 5061. On reaching the junction of Jalan Kolam Air, Lance Corporal Detective Noor Mohd. Salleh bin Ariffin and Constable Ribuan bin Hussin ("Ribuan") on motorcycle PBF 987 joined in the chase. Detective Rahim accelerated his motorcycle and managed to close in on the rider of motorcycle ABC 1250 and as both motorcycles travelled abreast of one another, Detective Ruslan held his authority card in his left hand and showed to the rider of motorcycle ABC 1250 and shouted: "Berhenti, Polis." It was an exercise in futility. The rider of motorcycle ABC 1250 ignored and proceeded ahead. As it was approaching a bend, the rider of motorcycle ABC 1250 reduced his speed and continued his journey without stopping. Sensing trouble, Detective Rahim maneuvered his motorcycle closer to the rider of motorcycle ABC 1250. This maneuvering resulted in the tyres of both motorcycles coming into contact with one another thereby occasioning a collision. As a result of the collision the rider of motorcycle ABC 1250 was thrown off balance and landed on the road. Both Detectives Ruslan and Rahim met the same fate.

The rider of motorcycle ABC 1250 got up and tried to flee. Detective Ruslan swiftly acted and grabbed the waist of the motorcyclist from the rear. The motorcyclist continued to struggle to free himself from that rear tackle. By this time, the rest of the police party arrived and managed to subdue the motorcyclist. Ribuan handcuffed the motorcyclist to the front and took out the white crash helmet worn by him. That motorcyclist was non-other than the accused.

The whole episode was witnessed by Zulkifli, who then approached the accused, introduced his office and declared his intention to check motorcycle ABC 1250. It was apparent that the accused was pale, frightened and spotted long hair. Inspector Zulkifli took out the brown bag (P7B) which was still strapped neatly to the rear seat of motorcycle ABC 1250 (P12) by a "tali jaring" (P10B) and examined its contents in the presence of the accused. Inside the brown bag (P7B), an Utusan Malaysia newspaper (P9B) folded as a wrapper was found. Upon opening the newspaper (P9B), two packages were found. Each package contained one cyclindrical block of compressed plant material suspected to be cannabis. Zulkifli then repacked the two packages using the same newspaper (P9B) and kept them inside the brown bag (P7B) and thereafter, slung the brown bag (P7B) across his shoulder. Zulkifli then proceeded to examine the accused and from his person recovered RM1,432 (P5B), This money was also kept inside the brown bag (P7B) by Zulkifli. From the scene, the accused and the exhibits were taken to Gerik police station. Upon arrival at Gerik police station, Zulkifli marked the exhibits and lodged a police report vide Gerik repot No. 126/33. A search list was also prepared (P17).

In due course, the government chemist analysed the two cyclindrical blocks of compressed plant material and confirmed it to be cannabis weighing 830 grammes, a dangerous drug within the meaning of s. 2 of the Act. The prosecution meticulously led evidence as to the movements of the exhibits and I was wholly satisfied that there was no break in the chain of evidence relating to the exhibits until they reached this Court.

Upon maximum evaluation of the evidence as led by the prosecution, I was satisfied that a *prima facie* case had been established (*Khoo Hi Chiang v Public Prosecutor* [1994] 1 AMR 5 at page 323, with particular emphasis on page 357) and accordingly, I called upon the accused to enter his defence. Seen in its correct perspective, the ambush and the subsequent chase by the police party of the accused as set out in the brief recital of the facts are not inherently improbable and particularly, the recovery of the brown bag seen by several police personnel to be strapped neatly to the rear seat of motorcycle ABC 1250 are hardly challenged by the defence. This would mean that the version of the police in regard to the recovery of the brown bag strapped neatly to the rear seat of motorcycle ABC 1250 as adverted to by Zulkifli, Detectives Ruslan and Mohd. Shah becomes stronger and makes the case for the prosecution, at this juncture, as solid as the rock of Gibraltar. The search list (P17) supports the fact of recovery of the exhibits from the accused. That search list (P17) gives credence to the story of the prosecution and strengthens the case for the prosecution. The conduct of the accused at the time of the arrest as described by the prosecution witnesses should rightly be considered. Zulkifli saw the accused turning his face in the direction of Detective Ruslan when the latter identified his office by showing the authority card. Upon hearing the words: "Berhenti, Polis", the accused must have known that the police was trailing him and had beckoned him to stop. Yet, the accused proceeded ahead and tried to escape

from the clutches of the law. The accused must have known that the brown bag (P7B) strapped neatly to the rear seat of motorcycle ABC 1250 (I have examined the "tali jaring" (P10B) and found it to be durable and strong (see photograph P13L)) and held in place by the "tali jaring" (P10B) would enable him to manoeuvre his motorcycle without fear that the brown bag would fall onto the road. This must have prompted him to ride the motorcycle in the manner as described by Detective Ruslan. A fitting description would be an act of transporting the dangerous drug within the meaning of s. 2 of the Act. I was also satisfied that the prosecution had in fact raised the presumptions under ss. 37(d) and (da)(vi) of the Act against the accused on the evidence thus far adduced.

There were concerted attempts to discredit the prosecution witnesses by alleging that they had assaulted the accused. These allegations were vehemently denied by the prosecution witnesses (see *Public Prosecutor v. Ibrahim bin Mastari* [1980] 2 MLJ 189). I see no reason whatsoever to disbelieve the prosecution witnesses on this score.

Evidence was also led as to the ownership of motorcycle ABC 1250 (P12). The unchallenged evidence was that the motorcycle ABC 1250 (P12) belonged to Zolkfely bin Abdul Rahman (SP8-"Zolkfely Rahman"), the brother of the accused (see the registration card (P22)). Zolkfely Rahman had earlier left his motorcycle on 27 January 1993, at his mother's house at Kampong Paya, Changkat Jering, Taiping under lock and key for safekeeping. When he returned to collect the said motorcycle on 30 January 1993, he discovered that it was missing and he lodged a police report (P21) to that effect. Zolkfely Rahman was very categorical on the following salient points:

(1) that he did not leave any item on the motorcycle on 27 January 1993, when he left the said motorcycle at his mother's house;
(2) that he never seen the white crash helmet (P8) prior to this;
(3) that he never seen the brown bag (P7B) prior to this nor knew the owner of the brown bag and that brown bag (P78) was not left on his motorcycle on 27 January 1993, when he parked the said motorcycle at his mother's house;
(4) that he never seen the "tali jaring" (P10B) nor possess one like it and he did not use the "tali jaring" (P10B) on his motorcycle; and finally
(5) that he did not put the exhibits as shown in photographs P13I and P13J, in particular, the two cyclindrical blocks of compressed plant material (the cannabis - the subject matter of the charge) on his motorcycle on 27 January 1993, when he left the said motorcycle in his mother's house and he denied ownership of them.

On maximum evaluation of Zolkfely Rahman's evidence, one thing is certain: he did not know as to what his brother, the accused, had done on that fateful day.

The defence

The accused who chose to give his evidence under oath said that he carried an ubat - a kampong medicine on the day of his arrest. He elaborated at great length on this ubat and emphasised that it was his father who had in 1991 requested him to hunt for the ubat. He stated that the ubat comprised of "bunga pa' ma", "tongkat Ali", "daun kulit kayu Fatimah" and "daun cerita" meant to cure ailments like "sakit lutut," "sakit badan" and "sengal-sengal." Apparently, his father needed the ubat. Although his brother by the name of Zolkfely Rahman had previously obtained the ubat, yet the accused saw it fit not to seek the help of his brother in order to procure the ubat. Instead, the accused sought the help of his friend by the name of Nazrul to obtain the ubat. In examination-in-chief, the accused said that twice before 1993 he had followed Nazrul to Grik in order to procure the ubat. Under re-examination, the accused said that he had on five previous occasions obtained the ubat from Nazrul.

Reverting to the incident on 28 January 1993, the accused said that he had on the morning of 28 January 1993 requested his father's permission to use motorcycle ABC 1250 (P12) belonging to his brother for the purpose of procuring the ubat at Grik. With that motorcycle, the accused proceeded with Nazrul to Kampong Kerunai, and upon arrival, they proceeded straight to Solar's house - a friend of Nazrul. Nazrul introduced the accused to Solar by these words: "Bapa saya selalu pakai ubat itu." Solar replied: "Ubat itu ada." The accused and Nazrun then entered Solar's house, had drinks and smoked cigarettes. The drinks were prepared by Solar's wife. Solar then entered a room and upon emerging from that room said: "Inilah

ubatnya." That ubat was placed in a brown bag and as if to confirm the point, the accused stated that Solar said: "Ubat ada isi di dalam beg." The accused said that that bag belonged to Nazrun. Solar handed the brown bag (P7B) to Nazrun. Nazrun then placed the brown bag on the table and the three of them continued with their conversation. A short while thereafter, Nazrun requested the accused to return home as Nazrun had to go to Betong with Solar. Solar then carried the brown bag and the three of them then proceeded to the motorcycle to tie the brown bag to the rear seat of the motorcycle. The accused assisted by holding the brown bag and with the aid of the "tali jaring" (P10B) the brown bag was eventually tied to the rear seat of the motorcycle. The accused said that Solar took the "tali jaring" from the brown bag. The accused further said that Nazrun did not open the brown bag and the accused trusted Nazrun.

The accused then proceeded home to Cangkat Jering on the motorcycle ladened with the brown bag. As the motorcycle went past Grik town, another motorcycle (ridden by two persons - the rider and the pillion) came nearer to his right side and the accused was asked to stop. Upon hearing this, the accused reduced his speed and it was alleged that Detective Ruslan, who sat as pillion in that other motorcycle, grabbed hold of the accused's neck thereby causing the motorcycles to fall. All of them came tumbling down to the ground. As the accused fell, his back was stepped upon, his hands were pulled and handcuffed, he was made to stand up and two to three unknown persons assaulted him as they said that he wanted to run. He was brutalised. Zulkifli then introduced his office by showing his card and Zulkifli then proceeded to examine the brown bag. Zulkifli tore one of the packages and told the accused that he was in possession of the ganja. The accused retorted that that was the ubat kampong which he got for his father. Zulkifli then said that he wanted to check the body of the accused and at the same time Zulkifli asked the accused to admit. Thereafter, the accused's stomach was punched and his back was kicked. The accused said that Zulkifli did not assault him. However, the accused could not identify his assailants.

In the police station, the accused was again assaulted in Zulkifli's office when he refused to sign the search list. Again, the accused emphatically mentioned that Zulkifli did not assault him. The accused could not also identify his assailants.

The accused also narrated as to his nasty encounter with Inspector Mohd. Zaid Abdullah (SP9- "Zaid"). Zaid was said to have told the accused that the case "boleh pergi tali gantung", and that if the accused were to admit, the accused's father and brother would not be arrested and further, if the accused were to admit, Zaid promised that: "Awak mengakulah kita boleh pecah seksyen.

The father of the accused by the name of Abdul Rahman bin Abdullah (SB2 - "Rahman") gave evidence that he requested the accused to procure the ubat kampong for him and he further amplified the ubat kampong to be "akar-akar kayu", "bunga pa' ma", "tongkat Ali", "daun cerita" and "kulit kayu halban". There were, unfortunately material contradictions between the evidence of Rahman and the accused which struck at the very core of the defence which I shall, in due course, elaborate. Suffice for me to say that Rahman agreed that the story about the ubat kampong surfaced after the accused was arrested.

Knowledge

The accused maintained that he had no knowledge of the drugs in the brown bag more so as he thought it was ubat kampong and that the brown bag belonged to Nazrul. Knowledge being an essential ingredient that makes up the state of mind of an individual, the pertinent question to ask is this: how to prove knowledge in order to establish possession? The skull of the accused cannot be dissected and exhibited as an exhibit to prove knowledge - that would certainly be an exercise in futility. The best way is to look at the surrounding circumstances and from it to make the necessary inferences. I am guided in this respect by the passages appearing in *Chan Pean Leon v. Public Prosecutor* [1956] MLJ 237, 239, where Thomson J. said to the following effect:

> Intention is a matter of fact which in the nature of things cannot be proved by direct evidence. It can only be proved by inference from the surrounding circumstances. Whether these surrounding circumstances make out such intention is a question of fact in each individual case.

His Lordship further said on the same page in the right column:

> Here again knowledge cannot be proved by direct evidence, it can only be proved by inference from the surrounding circumstances. Again the possible variety of circumstances

which will support such an inference is infinite. There may be something in the accused's behaviour that shows knowledge, or the nature of the thing may be so obvious that it is possible to say 'he must have known what it was' or again in cases under the Dangerous Drugs Ordinance, there may be a statutory presumption which fills a gap in the evidence.

With these principles in mind, I shall now evaluate the defence. There were several fundamental infirmities in the defence.

In the first place, the accused performed miserably in the witness box. The accused appeared dishonest and untruthful. There were many occasions where the accused displayed fumblings which were quite obvious and apparent. The accused was shaken and practically torn into pieces under the rigours of cross-examination. Under re-examination, the accused repeated and agreed with whatever his Counsel said like the proverbial parrot taught to mimic by its master. Likewise, Rahman out to save his son exhibited falterings, hesitations in answering questions. Rahman was certainly a bad witness for the accused, for he gave contradictory evidence. Against these backgrounds, the learned Deputy rightly argued that the defence of ubat kampong cropped up at the last minute and this point seems to be borne out by Rahman under cross-examination to the following effect.

Put: Cerita ubat ini timbul selepas Ruslan kena tangkap.

Jawab: (Lama hendak jawab) Benar. Setuju.

It was averred by the accused and somewhat corroborated by Rahman that Zolkfely Rahman had previously successfully obtained the ubat kampong for Rahman. But unfortunately, the learned Counsel for the defence failed miserably to cross-examine and to put this point across to Zolkfely Rahman. From the tenor of Zolkfely Rahman's evidence the question of ubat kampong was never brought up at all. Though Zolkfely Rahman was the prosecution witness, yet as the brother of the accused he would certainly be in a position to enlighten the Court and also assist the defence, if there was any truth to the defence of ubat kampong.

In the second place, the accused testified that he told his father, Rahman, in the morning of 28 January 1993, that he (accused) wanted to use the motorcycle ABC 1250 (P12) belonging to his brother, Zolkfely Rahman, to procure the ubat kampong at Grik. Surprisingly, this point was not supported by Rahman. Rahman merely said that at 5.30 a.m. on 28 January 1993, he left for the surau and returned at 7.00 p.m. that day and a short while later, Rahman changed his story and said that "bila matahari naik saya balik". Rahman emphatically said that on 28 January 1993, the accused did not ask him about Zolkfely Rahman's motorcycle Had the accused obtained prior permission to use the said motorcycle, Zolkfely Rahman would not have reported its loss to the police. See the police report (P21).

In the third place, Zulkifli was cross-examined in regard to the roles played by Cholar, viz: that Cholar was a big time drug trafficker in Grik; that Cholar as an informer had earlier tipped Zulkifli by phone in regard to the ambush that took place soon thereafter which resulted in the arrest of the accused and lastly, that Cholar had a brother working with the Unit Kawalan Keselamatan at Grik. But no where was Zulkifli cross-examined in regard to the purported role played by Cholar or Solar in supplying the drug to the accused in the presence of Nazrun. In fact, all the prosecution witnesses were not cross-examined on the following points -

(a) that Nazrul or Nazrun was a close friend of the accused;
(b) that twice before 1993 the accused followed Nazrul or Nazrun to Grik in order to procure the ubat kampong;
(c) that the accused had on five previous occasions obtained the ubat kampong from Nazrul or Nazrun;
(d) that the accused followed Nazrul or Nazrun on 28 January 1993 to kampong Kerunal to meet Solar or Cholar in order to obtain the ubat kampong;
(e) that the brown bag (P7B) belonged to Nazrul or Nazrun, and
(f) that the "tall jaring" (P10B) was taken by Solar or Cholar from the brown bag (P7B).

To be fair, however, the learned defence Counsel did put forth when cross-examining Zaidi the question of the ubat kampong. The transcript reads thus:

Put: YKT ada jawab iaitu: Ini bukan ganja. YKT ada beritahu awak bahawa dia dihantar oleh bapanya untuk dapat bunga pak ma dan daun kulit kayu.

Jawab: Tidak ada.

Put: YKT ada beritahu kepada awak bahawa bunga pa' ma dan daun kulit kayu dikehendaki oleh bapanya untuk dicampur dan digunakan sebagai ubat untuk sakit sendi.
Jawab: Pun tiada.

Saya tidak pernah lihat bunga pa' ma.

But unfortunately the authenticity of the defence of ubat kampong crumbles to the ground on the evidence of Rahman himself - the father of the accused who as stated earlier agreed that the story about the ubat kampong cropped up after the arrest of the accused.

The learned defence Counsel argued that it was not necessary for the defence to disclose its entire defence to the prosecution. Not a single authority was advanced for this novel proposition. On the contrary, there are numerous Malaysian authorities in existence which lay down that there is a clear burden upon defence Counsel to put their case to prosecution witnesses (*R v. Vilayuthan* [1935] MLJ 277, *Chua Beow Huat v. PP* [1970] 2 MLJ 29, *R v. Pichimuthu* [1970] 2 MLJ 143 and *Wong Swee Chin v. PP* [1981] 1 MLJ 212).

In the fourth place, if the accused thought that he carried the ubat kampong at the material time why did he try to escape; why did he struggle to set himself free from the rear tackle of Detective Ruslan; why did he appear pale and look frightened. These are pertinent and unanswered questions. It must also be borne in mind that at the scene immediately upon being arrested the accused did not tell Zulkifli, Detectives Ruslan and Mohd. Shah that the brown bag contained ubat kampong (no cross-examination of these witnesses on this point). Instead the accused kept quiet and tried to escape.

Rahman, the father of the accused in a show of paternal bond agreed that he loved his son and was ever willing to help his son to the extent that initially he stated that Nazrun used to frequent his house but relented and agreed that he lied and that he knew Nazrun only on one occasion when Nazrun sent the ubat kampong to him.

It is germane to point out that the defence introduced four defence characters bearing such names as Cholar, Solar, Nazrul and Nazrun. These names were pronounced clearly by not only the defence Counsel but also by the accused. No attempts were made by the defence to correlate Cholar and Solar as referring to one character and Nazrul and Nazrun as referring to one character.

In my judgment and it is my finding of fact that Cholar, Solar, Nazrul and Nazrun are non-existent characters coined up by the accused in an attempt to push the blame to them.

It was argued by the learned defence Counsel that though Zaidi dusted the colourless plastic bags which were covered with blue and yellow adhesive tapes then (P4B) and (P4C), he could not find any traces of fingerprints on them and consequently, it would support the defence story, so submitted the learned defence Counsel, that the accused did not handle the cannabis found therein and rightly, therefore, the accused should not be convicted for trafficking the cannabis. In my judgment, the negative dusting reports on (P4B) and (P4C) by Zaidi *per se* cannot exculpate the accused from liability. The manner in which the drugs were packed should be considered in its correct perspective. To begin with, the photographs P13I and P13J clearly showed (P4B) and (P4C) with the cannabis in question. The drugs were packed neatly in two cylindrical blocks and each placed in (P4B) and (P4C) and in turn were wrapped up in a newspaper (P9B) and then placed inside the brown bag. Zulkifli had to tear (P4B) and (P4C) to see its contents. It was therefore not surprising that Zaidi failed to successfully dust (P4B) and (P4C) for fingerprints. At any rate, the accused in his defence did not deny transporting the brown bag on the motorcycle; he merely denied transporting the cannabis in the brown bag on the motorcycle. The accused said that he transported the ubat kampong in the brown bag. But surprisingly, Rahman, the accused's father agreed with the learned Deputy that Nazrun had handed to him once the ubat kampong wrapped up like the ones as shown in photographs (P13I) and (P13J). This would mean that the ubat kampong referred to by Rahman was in fact cannabis and nothing else. In an attempt to help his son, Rahman blundered and agreed that Nazrun had on one occasion supplied him with cannabis. It is my findings of fact that the accused not only had knowledge that the brown bag (P7B) contained cannabis but he also trafficked in 830 grammes of cannabis on the date, time and place in question as per the charge.

There is another important point which I should mention. It is this.

During cross-examination by the learned Deputy Public Prosecutor of the accused, impeachment proceedings were conducted by the learned Deputy against the accused. For this purpose, the learned Deputy pointed out the contradictions in the evidence adduced by the accused in Court to that which he had earlier stated in his cautioned statement (see the original (ID26) as well as the carbon copy (IDD26A)). The learned Deputy, in accordance with *Muthusamy v. Public Prosecutor* [1948] 14 MLJ 57, highlighted to the Court the relevant parts of the cautioned statement which he claimed contained the contradictory evidence. The Court after considering these relevant parts held that they were material for purposes of impeachment. But the Court applying *Krishnan & Anor. v. Public Prosecutor* [1981] 2 MLJ 121 FC proceeded with a trial within a trial to determine the admissibility of the cautioned statement as its voluntariness was challenged and at the end of it ruled against its admissibility. With that, the learned Deputy had to abandon his plan of impeaching the credit of the accused. I must mention here that I am not influenced in any way with the contents of the cautioned statement of the accused (ID26 and IDD26A) and in arriving at my decision, I merely decide on the evidence adduced in the original trial without in the least being influenced by what had transpired during the trial within the trial. I have assured the learned defence Counsel and the learned Deputy of my good intentions and they are fully aware of it.

For the reasons adumbrated above, it is the finding of this Court that the defence story was nothing but a pack of lies calculated to deceive this Court. Having seen and heard the accused and having considered his defence in its entirely as against the prosecution evidence, I did not and could not believe him. I am fully satisfied that the accused had failed to rebut the presumptions under ss. 37(d) and 37(da)(vi) of the Act on the balance of probabilities (*Pang Chee Meng v. PP* [1992] 2 SCR 1, *Mohamed Radhi v. PP* [1992] 2 SCR 145, *Nagappan Kuppusamy v. PP* [1988] l SCR 271 and *Ilian Endin & Anor. v. PP* [1988] 1 SCR 203). As the quantities of the dangerous drugs, to wit, 830 grammes far exceeded the stipulated amount in s. 37(da)(vi) of the Act, I am satisfied that the accused did traffic in 830 grammes of cannabis on the date, time and place as mentioned in the charge.

The prosecution had proved its case beyond all reasonable doubt and accordingly, I found the accused guilty of the offence for which he was charged and convicted him. I sentenced him to death.

Order accordingly.